

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

David A. Garcia,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:10cv525
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden, Chillicothe Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge J. Gregory Wehrman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on April 8, 2011 a Report and Recommendation (Doc. 33). Subsequently, the respondent filed objections to such Report and Recommendation (Doc. 37).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, petitioner's 28 U.S.C. §2254 petition is **DENIED**.

A certificate of appealability will not issue with respect to any claim alleged in the petition, because no claim for relief states a "viable claim of the denial of a constitutional right" or presents issues that are "adequate to deserve encouragement to proceed further." *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)); *see also* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b); and with respect to any application

by petitioner to proceed on appeal *in forma pauperis* from any Order adopting the Report and Recommendation to deny habeas corpus relief on claims alleged in the petition, the Court will certify pursuant to 28 U.S.C. 1915(a)(3) that an appeal of such an Order will not be taken in “good faith,” and therefore, **DENIES** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6<sup>th</sup> Cir. 1997).

IT IS SO ORDERED.

s/Susan J. Dlott  
Chief Judge Susan J. Dlott  
United States District Court